IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.785 OF 2005
IN
NOTICE OF MOTION NO.700 OF 2005
IN
L.C.SUIT NO.829 OF 2005

Balwant Kaur Talwar — Appellant
vs.
Municipal Corporation of
Gr. Bombay — Respondents

Mr.Anil Singh with Mr.D.R.Shah for the appellant.

Ms.Geeta Joglekar for the B.M.C.

Mr.Zubin Dalal for the respondent no.2.

CORAM : B.H. MARLAPALLE,J.

DATED : 29th August 2005

P.C.

Heard Mr.Singh, the learned counsel for the appellant-plaintiff and Mrs.Joglekar, the learned counsel for the respondent-corporation.

2. The plaintiff claims to be occupant of the suit structure with G.I. sheet wall and A.C.sheet roofing admeasuring 10'x10.6'x8' (average height) at the rear side of building no.21, near Gurukripa Communication at G.T.B. Nagar, Sion Koliwada, Mumbai-37 and the defendant no.1 had issued show cause notice dated 17.1.2005 under Section 351 of the M.M.C. Act directing

the plaintiff to remove the said unauthorised structure within 7 days. The show cause notice was replied on 22.1.2005 through an advocate stating that the suit structure numbered as shop no.417 was old and in existence since 1958. It was also claimed that there was no re-construction made though the suit shop was standing on the land belonging to the Collector of Mumbai and the plaintiff's husband was paying the demurrage charges all along to the Assistant Municipal Commissioner, F/N Ward passed an order on 9.2.2005 and confirmed the show cause notice. The legality of this order has been challenged in L.C. Suit No.829/2005. Prior to the said suit the plaintiff had also filed L.C.Sit No.2643/20045 for permanent injunction and the notice of motion moved in the said Suit was decided by observing that the Corporation followed the due process of law for demolishing the suit structure. In the fresh Suit, Notice of Motion No.700/2005 was also taken out and the same has been rejected by the impugned order dated 10.6.2005 passed by the learned Judge of the City Civil Court, Greater Mumbai. The learned Judge observed that the plaintiff failed to make out a prima facie case in her favour to protect the structure by way of interim injunction. The demand notice dated 21.8.1985 relied upon by the plaintiff was found to be in respect of the structure bearing no.268, near building no.21 and, therefore, it was of no assistance to the plaintiff. A

copy of the agreement submitted at Exhibit D was also relied upon. This agreement indicated that the plaintiff's husband had entered into a business relationship with Mr.S.M.Sethi for conducting a business in one of the shops admeasuring about 12'x15' but the said agreement did not mention shop no.417. The trial Court has recorded a prima facie finding that the suit structure was re-constructed as it was earlier demolished by the Corporation on 23.11.2000.

3. When this appeal has been taken up for hearing on admission today, it is stated by the learned counsel for the appellant that the suit structure has already been demolished. Mr.Singh, the learned counsel further submitted that he has filed a separate Civil Application being C.A.(Stamp) no.18902/2005 and prayed for direction to re-construct the said structure.

4. I am satisfied that this appeal need not be entertained at this stage and if the plaintiff succeeds in the Suit, he may seek appropriate remedy including the remedy for re-construction. This is not a fit case to grant such a relief at an interlocutory stage in the appeal which has virtually become infructuous.

5. The appeal is, therefore, disposed off as infructuous and the appellant is at liberty to approach

the trial Court for further appropriate relief.

6. Civil Application does not survive.

(B.H. MARLAPALLE,J.)